IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO: 6226 of 1992

Between:

Shaik Khader Mohiuddin son of late S.A. Gaffar
Special Judge for CBI Cases at Hyderabad

... PETITIONER

AND

1 Chief Secretarty,
Govt of AP Secretariat, Hyderabad
2 Registrar, Administration High Court of AP
Hyderabad
3 Director of School Education, Govt of AP
Near A.G.'s Office, Hyderabad

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction declaring the action of the 3rd respondent in not passing final orders and instead sending the letter of recommendation by his Proceedings in No. 1938/H3/1991 dt. 29/02/1992 to the Secretary, Education and the inaction of the 1st respondent in not acting upon the recommendation of the 3rd respondent dt. 29/02/1992 as arbitrary, illegal, unjust and contrary to the provisions of G.O.Ms.No.170 Educations (EE) Department DT. 30/04/1991 and also violative of the fundamental rights guaranteed to the petitioner under Article 14, 16 and 21 of the Constitution of the India and also declare that G.O.Ms. No. 165 dt. 21/04/1984 is arbitrary, illegal, unjust and violative of the fundamental

rights guaranteed to the petitioner under Article 14 and 16 of the Constitution of India and issue the consequential direction to the respondents to forthwith alter the date of birth in the service register of the petitioner from 15/05/1934 to 16/06/1935.

Counsel for the Petitioner: MR.S.SRINIVAS REDDY

Counsel for the Respondents: SMT.M.BHASKARA LAKSHMI (SC FOR APHC) for R-2

Govt. Pleader for School Education for R-1 and 3

The Court made the following Order:

ORDER: (Per Hon'ble The Chief Justice)

In this petition filed on 10-05-1992, petitioner is seeking direction against the respondents to continue him in service on the ground that his correct date of birth is 16-06-1935 and not 15-05-1934. This relief the petitioner sought alleging that from 04-04-1968 till the date of filing of the Writ Petition, he had been representing to the authorities to effect necessary changes in the service register and that in case he is retired on 31-05-1992 based upon the date of birth as entered in the S.S.L.Certificate
i.e. 15-05-1934, he would suffer grave and irreparable loss.

2. No doubt that the petitioner initially joined service as Assistant Public Prosecutor in 1967 and is stated to have submitted a representation on 04th December, 1968 for correction of his date of birth from 15-05-1934 to 16-06-1935. The said representation remained pending and no action was taken thereupon. In the meanwhile, petitioner participated in the selection process initiated in 1968 and was selected as District Munsif and joined the duty on 09-11-1973 after undergoing training from 09-11-1973 to 08-03-1974. He was posted as Munsif Magistrate, Madakasira, and was duly confirmed as District Munsif on 31-03-1975 by a notification

issued by the High Court of Andhra Pradesh on 03-09-1980. He was promoted as
Sub-Judge by virtue of notification dated 26-03-1983 and his probation in the said post was declared with effect from
13-06-1985. Further, he was promoted as District Judge Grade-II by transfer by an order dated 04-03-1989 and was posted as Additional Chief Judge, City Civil Court, Hyderabad, on
29-06-1989. In the meanwhile, when the petitioner was in judicial service, he submitted a representation for change of his date of birth, which was forwarded by the High Court to the Government and on 02-02-1980, the Secretary to Government, Home (Cts.) Department, informed the Registry of the High Court that petitioner's representation cannot be accepted since as per the Rules in force, date of birth entered in the Service Register at the time of the entry of Government servant is final and cannot be altered unless there is *bona fide* clerical error. It was informed that the said representation of the petitioner cannot be accepted and a copy of this order was forwarded to the petitioner by postal endorsement in March, 1980. Thereafter, there was no action on the part of the petitioner, but in the year 1990 the petitioner appears to have again submitted his representation directly to the Government and his case was considered favourably. In the said proceedings taken out in 1992, enquiry was also stated to have been conducted by third respondent pursuant to which, according to petitioner, his father gave the wrong date as 15-05-1934 instead of 16-06-1935, so that petitioner could appear in the examination. Had such incorrect date of birth not been recorded by his father,
it was not possible for the petitioner to appear in the said examination. On the basis of the said material, petitioner then started making representations for acceptance of his date of birth as 16-06-1935 instead of 15-05-1934. Writ Petition was filed at the verge of his retirement. The petitioner in fact had been superannuated on 31-05-1992.

3. Having kept silent from 1980 to 1991, the very filing of the

petition was belated and no relief in such petition could be granted to the petitioner. Moreover, any correction in date of birth carried out by third respondent subsequent to the rejection of petitioner's representation in 1980, at the most would be an administrative error on the part of third respondent, which cannot be kept at a higher pedestal than the decree of a Court. Even in case of petitioner obtaining a decree of Civil Court, to which the respondents may be parties, directing change in date of birth, the same would also not be a ground to carry out change in date of birth as entered in the service register on his declaration at the time of recruitment. This view holds good in view of the judgment of this Court in **G. KRISHNA MOHAN RAO V. REGISTRAR, A.P.A.T AND OTHERS** .

4 . Writ Petition is liable to be dismissed and is accordingly dismissed. No costs.

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DEVINDER GUPTA, CJ

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G. ROHINI, J

July 15, 2004

MRR/BSC

Copy to:

1 The Chief Secretary,
Govt. of AP Secretariat, Hyderabad
2 The Registrar (Administration)

High Court of AP
Hyderabad
3 Director of School Education, Govt of AP
Near A.G.'s Office, Hyderabad.

4 Two C.Cs to the Government Pleader for School Education, High Court Buildings, Hyderabad (O.U.T).

5 Two C.D. copies.